

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA

STEVEN A. BLACKISTON

v.

DONALD T. VAUGHN, et al.

CIVIL ACTION

NO. 95-3740

MEMORANDUM

Broderick, J.

September 23, 1998

Plaintiff Stephen Blackiston brings this pro se action against Defendants Superintendent Donald T. Vaughn, Lieutenant Robert J. Zahn, retired law librarian Winifred Young, and health care administrator Glen R. Jeffes. Plaintiff brings his claims pursuant to 42 U.S.C. § 1983, alleging violations of his rights under the Eighth and First Amendments. By Order of October 21, 1997, this Court restricted the Complaint to Plaintiff's "individual claims limited to his incarceration in December, 1994 at SCI Graterford." By the same Order, the Court transferred the issues stemming from Plaintiff's incarceration at SCI Camp Hill to the Middle District of Pennsylvania.

Presently before the Court are two motions to dismiss Plaintiff's Complaint for failure to state a claim upon which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6), one brought by Defendants Vaughn, Zahn and Young, and the other brought by Defendant Jeffes. Plaintiff has filed responses to both of these motions to dismiss. In response to the motion to

dismiss brought by Defendants Vaughn, Zahn and Young, Plaintiff has withdrawn his First Amendment claim regarding access to the court and requests dismissal of Winifred Young as a defendant.

The Court will grant Plaintiff's motion to dismiss Winifred Young as a defendant. Therefore, the Court will only consider the defense motions to dismiss with respect to Plaintiff's remaining three Eighth Amendment claims against Defendants Vaughn and Zahn, and against Defendant Jeffes.

Both motions to dismiss raise similar issues of law, and the Court will address them together in a single Memorandum. For the reasons stated below, the Court will grant the motion to dismiss Plaintiff's Complaint brought by Defendant Jeffes, and the Court will grant in part and deny in part the motion to dismiss brought by Defendants Vaughn and Zahn.

In deciding a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6), the Court accepts as true all factual allegations contained in the complaint, as well as all reasonable inferences which could be drawn therefrom, and views them in the light most favorable to the plaintiff. H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989); Zlotnick v. TIE Communications, 836 F.2d 818, 819 (3d Cir. 1988).

The Court holds the allegations of a pro se complaint to "less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520-521 (1972). Accordingly, the Court will allow this pro se litigant the opportunity to offer supporting evidence of his allegations unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id.

Plaintiff's Complaint alleges, in pertinent part, the following:

Plaintiff was temporarily transferred to SCI Graterford on December 2, 1994 so that he could appear in federal court. Plaintiff was housed in Graterford's Restricted Housing Unit ("RHU"). Plaintiff alleges he was confined to the RHU J-Block, C-Wing, Cell 9 twenty-four hours a day, seven days a week, for 20 days, until December 22, 1994. Plaintiff alleges that the RHU J-Block, C-Wing has thirteen single cells, and that ten of the thirteen prisoners housed there during his stay were smokers. Plaintiff further alleges that the RHU J-Block housed about 120-125 prisoners during the time Plaintiff was there, and that approximately 87% of those prisoners were regular chain-smokers. Plaintiff alleges that the RHU J-Block has a closed, inadequate air ventilation system, and that as a result, cigarette smoke lingers on the RHU J-Block wings.

Plaintiff alleges that he is a non-smoker, but that as a result of his exposure to environmental tobacco smoke during his stay at Graterford, he suffered from severe headaches, chest pains, breathing problems, nausea, and watery eyes, all of which, Plaintiff alleges, pose a serious health risk to Plaintiff now and in the future. Plaintiff alleges that sometime between December 8th and December 20th, he was interviewed by a prison doctor named Dr. Shah and that he complained to the doctor about the severe headaches, chest pains, breathing problems, nausea, and watery eyes he was experiencing as a result of environmental tobacco smoke. Plaintiff also alleges that a Dr. Mellowbranch at SCI Graterford documented in Plaintiff's medical records Plaintiff's complaints of physical ailments related to his exposure to environmental tobacco smoke.

Plaintiff alleges that on December 9, 1994, he submitted an "Inmate Request to Staff Member" directed at Superintendent Vaughn requesting that he be housed in a smoke-free area, but that Defendant Vaughn refused to respond to Plaintiff's requests. Plaintiff then filed an Institutional Grievance, once again requesting that he be housed in a smoke free area. On December 14, 1994, Lieutenant Zahn, who was assigned to the RHU J-Block during Plaintiff's stay there, responded in writing to Plaintiff's grievance, stating that there were no smoke-free areas on the RHU J-Block.

Plaintiff also alleges that during his stay at SCI Graterford, there was no heat or hot water circulating in the RHU J-Block C-Wing, and that he was cold from lack of heat and from having to take cold showers. Plaintiff alleges that on December 9, 1994, he submitted an "Inmate Request to Staff Member" to Defendant Vaughn in which he informed Superintendent Vaughn that there was no heat or hot water and that he had been refused adequate winter hat and gloves. Plaintiff alleges that Defendant Vaughn did not respond to this request. Plaintiff also alleges that he filed an Institutional Grievance, but that Defendant Zahn informed him that there was nothing he could do about the lack of hot water and heat in C-wing.

Finally, Plaintiff alleges that during exercise time in RHU J-Block, Plaintiff's fellow prisoners engaged in uncivilized behavior, including throwing feces, urine, and spitting on each other, and that the prisoners had to use their winter coats as shields to protect themselves from these attacks. Plaintiff alleges that on or about December 9, 1994, he informed Defendant Zahn of these conditions and that Defendant Zahn advised Plaintiff, "If you don't like it, don't go to the yard."

Plaintiff brings three claims under the Eighth Amendment. Plaintiff alleges that Defendants Vaughn, Zahn and Jeffes violated his rights under the Eighth Amendment through their refusal to provide him with a smoke-free environment during his

twenty day stay at SCI Graterford. Plaintiff further alleges that Defendants Vaughn and Zahn violated his rights under the Eighth Amendment due to their failure to remedy the lack of heat and hot water during Plaintiff's stay at SCI Graterford, and through their failure to protect Plaintiff from the conduct of his fellow prisoners on the yard.

### **The Eighth Amendment**

The Eighth Amendment's ban on cruel and unusual punishment applies to a prisoner's conditions of confinement that are not formally imposed as a sentence for a crime. Helling v. McKinney, 509 U.S. 25, 29-30 (1993). To sustain an Eighth Amendment conditions of confinement claim, an inmate must establish two elements: the objective element requires that the conditions of confinement are inadequate, and the subjective element requires that the defendants have a culpable state of mind, which is measured by a "deliberate indifference" standard. Wilson v. Seiter, 501 U.S. 294, 297 (1991).

As to the first element, conditions of confinement may constitute cruel and unusual punishment if they result "in unquestioned and serious deprivations of basic human needs ... [which] deprive inmates of the minimal measures of life's necessities." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). "No static 'test' can exist by which courts can determine whether conditions of confinement are cruel and unusual, for the Eighth

Amendment must draw its meaning from evolving standards of decency that mark the progress of a maturing society." Id. at 346. The Eighth Amendment does not mandate comfortable prison conditions, and prisons that house inmates convicted of serious crimes cannot be free of discomfort. Peterkin v. Jeffes, 855 F.2d 1021, 1027 (3rd Cir. 1988). As the Supreme Court has stated, "extreme deprivations are required to make out a conditions-of-confinement claim ... [b]ecause routine discomfort is 'part of the penalty that criminal offenders pay for their offenses against society.'" Hudson v. McMillian, 503 U.S. 1, 9 (1992)(quoting Rhodes, 452 U.S. at 347).

As to the second element -- the "deliberate indifference" requirement -- a prison official's conduct does not violate a prisoner's constitutional rights "unless the official knows of and disregards an excessive risk to inmate health or safety .... The official must be both aware of facts from which the inference can be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Farmer v. Brennan, 511 U.S. 825, 837 (1994).

#### **The Environmental Tobacco Smoke Claim**

In Helling v. McKinney, 509 U.S. 25, 35 (1993), the United States Supreme Court held that the health risk posed by involuntary exposure of a prison inmate to environmental tobacco

smoke can form the basis of a claim for relief under the Eighth Amendment. With respect to the objective element necessary to prove an Eighth Amendment violation, the Court noted that a plaintiff must show that he is being exposed to unreasonably high levels of environmental tobacco smoke. Id. at 35. "Plainly relevant to this determination" is whether or not the plaintiff continues to be exposed to unreasonably high levels of environmental tobacco smoke. Id.

In Helling, the Supreme Court held that a prisoner whose cellmate smoked five packs of cigarettes a day stated a claim under the Eighth Amendment. However, in Oliver v. Deem, 77 F.3d 156, 159 (7th Cir. 1996), the Seventh Circuit held that an inmate with a mild case of asthma who was housed with smoking cellmates for 133 days failed to satisfy the objective element of an Eighth Amendment claim. Likewise, in Little v. Lycoming County, 912 F. Supp. 809, 818 (M.D.Pa. 1996), an inmate alleging that she was housed in close proximity to smokers for 93 days, resulting in a single reported instance of congestion and coughing, failed to satisfy the objective element of an Eighth Amendment claim as well. See also Bierequ v. Reno, 1994 WL 530665, \*3(D.N.J.) (prisoner housed for four months in "common room" with smokers fails to satisfy the objective element of Eighth Amendment claim).

Unlike in Helling, where the prisoner's cellmate smoked five



packs of cigarettes a day, the Plaintiff in the instant action was housed in a single cell and complains of the second-hand smoke which reached him from other prisoners' cells.

Furthermore, Plaintiff was exposed to environmental tobacco smoke at SCI Graterford for only twenty days, and is no longer exposed to environmental tobacco smoke. This degree of exposure simply fails to rise to the "unreasonably high" level required to state a claim of cruel and unusual punishment under the Eighth Amendment.

Moreover, even if Plaintiff had alleged exposure to "unreasonably high" levels of environmental tobacco smoke, his claim would still fail because he has not alleged "deliberate indifference" on the part of the Defendants. With respect to Defendant Jeffes, the health care administrator at SCI Graterford, Plaintiff fails to make any allegation whatsoever that Defendant Jeffes was aware of Plaintiff's exposure to environmental tobacco smoke or of his complaints to the prison doctor of physical ailments allegedly resulting from this exposure. Clearly, Plaintiff has failed to allege deliberate indifference on the part of Defendant Jeffes, and thus Defendant Jeffes' motion to dismiss will be granted.

With respect to Defendants Vaughn and Zahn, Plaintiff makes no allegations that they acted or failed to act despite their subjective knowledge of a serious risk facing Plaintiff.

Plaintiff alleges that he made one request directed to Defendant Vaughn that he be housed in a smoke-free area, to which request Defendant Vaughn did not respond. Plaintiff also alleges that he filed an Institutional Grievance, once again requesting that he be housed in a smoke-free area, to which Defendant Zahn responded in writing that no such area existed. Plaintiff fails to allege, however, that Defendants Vaughn or Zahn were in any way informed of any serious risk Plaintiff faced from his exposure to environmental tobacco smoke for twenty days. While Plaintiff alleges that he complained to a prison doctor of physical ailments allegedly resulting from exposure to environmental tobacco smoke, Plaintiff fails to make any allegation whatsoever that Defendants Vaughn and Zahn were aware of these physical ailments, much less that they disregarded them with deliberate indifference through their failure to house Plaintiff in a smoke-free area for twenty days. Thus, Defendants Vaughn and Zahn's motion to dismiss Plaintiff's Complaint will be granted as it pertains to Plaintiff's claim regarding environmental tobacco smoke.

#### **Failure to Protect Claim**

Prison officials have a duty to protect prisoners from attacks at the hands of other prisoners. Farmer v. Brennan, 511 U.S. 825, 833, (1994); Hamilton v. Leavy, 117 F.3d 742, 745 (3rd

Cir. 1997). A plaintiff states an Eighth Amendment claim for failure to protect if he alleges (1) a substantial risk of serious harm and (2) the defendants' deliberate indifference to that risk. Farmer, 511 U.S. at 834, 1977; Hamilton, 117 F.3d at 745.

Plaintiff alleges that during exercise time in J-Block JHU, other prisoners threw "feces, urine, and spit at each other and on other prisoners, and use the winter issued coats as shields." However, Plaintiff fails to allege that any of these attacks were directed at him, or that he was in any way harmed or faced a significant risk of harm from the conduct of his fellow inmates. Therefore, Plaintiff has failed to allege facts which, if proven, would satisfy the objective element of an Eighth Amendment failure to protect claim.

Furthermore, Plaintiff has failed to allege that Defendant Vaughn had any knowledge whatsoever of the behavior of the other inmates on the exercise yard, much less that he acted with deliberate indifference in failing to remedy the situation. Therefore, Plaintiff has clearly failed to state a claim against Defendant Vaughn with respect to the "uncivilized behavior" of Plaintiff's fellow inmates.

Regarding the behavior on the yard, Plaintiff alleges that Defendant Zahn advised him that if he didn't like it, he should not go to the yard. This allegation, alone, does not rise to the

level of deliberate indifference necessary to state an Eighth Amendment claim. Plaintiff has not alleged that the behavior on the yard posed any serious risk to Plaintiff, much less that Defendant Zahn was aware of such a risk and acted with deliberate indifference in failing to address it. Therefore, Plaintiff has failed to state a claim against Defendant Zahn under the Eighth Amendment with regard to the behavior of Plaintiff's fellow inmates on the yard. Thus, Defendants Vaughn and Zahn's motion to dismiss Plaintiff's Complaint will be granted as it pertains to Plaintiff's claim regarding the behavior of Plaintiff's fellow inmates on the exercise yard.

#### **Lack of Heat and Hot Water Claim**

In Wilson v. Seiter, 501 U.S. 294, 304 (1991), the Supreme Court recognized that "[s]ome conditions of confinement may establish an Eighth Amendment violation 'in combination' when each would not do so alone, but only when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need such as food, warmth or exercise -- for example, a low cell temperature at night combined with a failure to issue blankets." Id. Plaintiff has alleged that the cell block where he was housed during his stay at SCI Graterford from December 2 to December 22, 1994, was without any heat or hot water, that he had to take cold showers, that he was refused a

winter hat and gloves, and that he suffered from the cold as a consequence. He also alleges that Defendants Vaughn and Zahn were notified of these conditions in writing, but that they did nothing about the lack of hot water or heat while Plaintiff was confined at SCI Graterford. For the purposes of a 12(b)(6) motion, these allegations sufficiently state a claim of unconstitutional conditions of confinement in violation of the Eighth Amendment. Therefore, Defendants Vaughn and Zahn's motion to dismiss Plaintiff's Complaint will be denied as it pertains to Plaintiff's claim regarding the lack of heat and hot water.

In conclusion, for the reasons stated above, the Court will grant the motion to dismiss brought by Defendant Jeffes, and will grant in part and deny in part the motion to dismiss brought by Defendants Vaughn and Zahn. Specifically, the Court will grant Defendants Vaughn and Zahn's motion to dismiss as it relates to Plaintiff's claims regarding environmental tobacco smoke and the "uncivilized behavior" of Plaintiff's fellow inmates on the exercise yard, but the Court will deny Defendants Vaughn and Zahn's motion to dismiss as it relates to Plaintiff's claim regarding the lack of heat and hot water.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
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O R D E R

AND NOW, this 23rd day of September, 1998; Defendants Vaughn and Zahn having filed a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6); Defendant Jeffes having also filed a Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6); Plaintiff Blackiston having filed a motion to withdraw his First Amendment claims and dismiss Defendant Winifred Young as a defendant; the Court having considered all Motions; and for the reasons stated in this Court's Memorandum dated September 23, 1998;

**IT IS ORDERED:**

Plaintiff's Motion to dismiss Winifred Young as a defendant is **GRANTED**;

**IT IS FURTHER ORDERED:**

The Motion to Dismiss filed on behalf of Defendant Glen R. Jeffes is hereby **GRANTED**;

The Motion to Dismiss filed on behalf of Defendants Donald T. Vaughn and Robert J. Zahn is hereby **GRANTED** and Plaintiff's Complaint is **DISMISSED** insofar as the Complaint relates to Plaintiff's claims regarding environmental tobacco smoke and "uncivilized behavior" of Plaintiff's fellow inmates in the exercise yard;

The Motion of Dismiss filed on behalf of Defendants Donald T. Vaughn and Robert J. Zahn is hereby **DENIED** insofar as Plaintiff's Complaint alleges a claim regarding the lack of heat and hot water.

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**RAYMOND J. BRODERICK, J.**